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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,549	11/17/2003	John B. McCraw	JBM 1	5070

7590 11/23/2005  
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EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/715,549

Applicant(s)

MCCRAW, JOHN B.

Examiner

Melanie J. Hand

Art Unit

3761

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/17/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on November 17, 2003 was filed on the mailing date of the Application. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Objections***

Claim 22 is objected to because of the following informalities: the phrase "the introducer" lacks antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 9, 11-15 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Feibus (U.S. Patent No. 5,358,492).

With respect to **Claims 1,9,17-20**: Feibus teaches a woven surgical drain comprising channel 5 filled with filler cords 7 having an internal end, an external end and a middle. The external ends of cords 7 facing away from a wound site are gathered together and contained by said drain. (Fig. 13) (Col. 5, lines 39-44) Absorbent filler cords 7 are left to form a sponge at the wound site. Examiner concludes that said cords are capable of being spread apart from one another while said woven drain is held in place.

With respect to **Claim 2,10**: Feibus teaches a surgical tube 8 having a discharge connector 10 that is capable of being attached to a vacuum assist device. (Col. 5, lines 55-57)

With respect to **Claims 3,4,11,12**: Feibus teaches that the woven drain is comprised of filaments comprised of polyester and nylon. (Col. 4, lines 66-68, Col. 7, lines 17-21, 32-34)

With respect to **Claim 5,13**: Feibus teaches that the filler material 7 is absorptive.

With respect to **Claims 6,7,14,15**: Feibus teaches that drain fabric 15 is treated with antimicrobial and antithrombogenic agents. (Col. 6, lines 1-4)

Claims 21 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Righetti (U.S. Patent No. 6,605,068).

With respect to **Claims 21 and 22**: Righetti teaches a gravity drainage cord formed by braiding a plurality of strands 2 inserted loosely into a tubular sheath 3, wherein the ends of said strands that are placed in the wound are permitted to be spread outward. (Col. 1, lines 64, 65, Col. 2, lines 8,9, 25-28) Righetti teaches that the portion of sheath 3 intended for placement at a wound site is comprised of a plurality of drainage holes and that sheath 3 allows coupling to mechanical aspiration units. (Col. 2, lines 12-14, 28-30)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feibus ('492) in view of DiCarlo et al (U.S. Patent No. 6,929,626).

With respect to **Claims 8 and 16**: Feibus does not teach that said drainage bag is in fluid communication with a vacuum source. DiCarlo teaches a textile surgical drain having a textile valve 128 with portion 128a that acts as an aspiration valve and portion 128b that moves to a "closed" position upon removal of a negative pressure. (Col. 10, lines 40-44, 56-59) DiCarlo teaches that the textile valve as structured does not allow excess negative or positive pressure to increase the longitudinal length L1 of the closed position or decrease the longitudinal braid angle  $\theta$  below the initial angle the valve 128 was formed with (Col. 10, lines 50-55), thereby preventing distortion or breakage of the fibers and impeding their drainage capacity. Therefore it would be obvious to one of ordinary skill in the art to modify the woven surgical drain taught by Feibus to include a textile valve.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

